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Nicolas Cornell

University of Michigan, cornelln@umich.edu

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GAMBLING ON OTHERS AND RELYING ON OTHERS

Nicolas Cornell
University of Michigan Law School
3266 Jeffries Hall
Ann Arbor, Michigan 48109
United States

Gambling on another person and relying on another person are similar but intuitively distinct phenomena. This paper argues that gambling is distinguished by the stance that it necessarily involves towards the bet-upon conduct. It then contends that, where one has gambled upon the conduct of another, one has no standing to complain against that person for losses that result. This small point may have significant implications for how we think about speculative economic losses.

I.

Shakespeare's *Cymbeline* revolves significantly around a wager. Posthumus Leonatus has secretly married the King's daughter, Imogen. Upon discovering this fact, the King rejects the marriage and banishes Posthumus to Italy. There, Posthumus meets Iachimo, to whom he boasts of Imogen's qualities. Provoked, Iachimo dares Posthumus into a wager: Iachimo stakes ten thousand ducats against Posthumus's diamond wedding ring that, if Iachimo is given an introduction to Imogen, he can seduce her. Posthumus accepts and provides the letter of introduction. The remainder of the play largely concerns the aftermath of this wager, as Iachimo tricks Posthumus into believing that he has succeeded.

The wager is a striking objectification of Imogen. Shakespeare seems to draw out the objectification explicitly. At the beginning of the exchange, Posthumus contrasts his ring with his wife, declaring, "The one may be sold or given, or if there were wealth enough for the purchase or merit for the gift. The other is not a thing for sale, and only the gift of the gods." (1.5.88-92). And, yet, moments later, Posthumus is wagering with Iachimo, who claims that, "If you buy ladies' flesh at a million a dram, you cannot preserve it from tainting." (1.5.141-145). Two scenes later, the objectification is reinforced by Iachimo's mode of addressing Imogen:

Had I this cheek
To bathe my lips upon; this hand, whose touch,
Whose every touch, would force the feeler's soul
To th' oath of loyalty; this *object* which
Takes prisoner the wild motion of mine eye,
Fixing it only here... (1.6.119-124) (emphasis added)

The theme of objectification has been widely discussed by *Cymbeline* commentators. One describes Posthumus as a husband who "looks on his wife as a possession, whose greatest worth is the jewel of her chastity within the setting of her beauty." (Ziegler 1990: 78). Another writes, "His wager has removed his wife from an inner world of feeling and faith and placed her in a market of items and objects. Once at stake, Imogen becomes an object of calculation, not only priced but also theoretically subject to market fluctuations." (Jordan 1994: 39). The wager is, in short, a powerful representation of possessive objectification.

Gambling on another involves, as Shakespeare obviously appreciated, treating another in a manner wholly inconsistent with love and respect. It involves orienting oneself toward the other as an object, towards their actions as events. This orientation can be wrong. Posthumus wrongs Imogen by making the bet, treating her as something to be gambled upon. But gambling on others is not always wrong—or, at least, that is not the topic of this paper.

Rather, this paper concerns a different significance of the objectification involved in gambling on another person. The orientation of the gambler may, as in Posthumus's case be wrong; but, even when it is not, it bears on how the gambler can relate to the person on whom they gamble. My thesis is that a person lacks standing to complain against another person about injuries or losses that result from betting on that person's conduct. In contrast, a person who instead relies on another's conduct is not similarly barred from complaint.

This point may, at first blush, seem limited in its impact. I believe, however, that it has the potential to bear on quite significant topics in ethics and law. Ethical and legal theories that ground our answerability to others in causing harm regularly face concerns about overexpansiveness. Surely, the thought goes, we are not answerable for every setback to another's interest that may have resulted from our choices. Answerability must rest on something else altogether. But the lack of standing to complain about losses resulting from gambling may help answer this regularly recited concern about overexpansiveness. Many gains and losses in the market are akin to gambling in relevant respects. This fact—not the irrelevance of harm—may explain why we are not answerable for them. Or, at least, this is the direction in which I will gesture sketchily at the paper's conclusion.

II.

I contend that most people intuitively grasp some inchoate distinction between betting and relying. That is, we have distinctive concepts for each, even if our linguistic practice does not always precisely demarcate the difference.

It is easy to identify paradigmatic examples of betting on another person's conduct. If Bob places a bet with a casino that Ali will defeat Foreman, Bob is betting. Linguistically, we might still talk about Bob in terms of reliance. In placing the bet, we might say that he was relying on Ali's quick feet or on Ali's ability to thrive in the biggest moments. We could even say, perhaps, that Bob is relying on Ali for next month's rent. But, these locutions aside, this is a bet.

Paradigmatic examples of reliance are also readily at hand. If Rhonda purchases a nonrefundable airplane ticket in order to attend a conference on the dates set by the organizers, Rhonda is relying on those organizers. Here too, our language is not an unequivocal guide. We might say that Rhonda is gambling that the conference will not be cancelled. Nevertheless, this would seem to be reliance.

Despite our intuitive sense that betting and relying are distinct, there are obvious overlaps. In each case, a person chooses to expose themselves to a potential loss depending upon the conduct of another. So what is the difference?

One might first think that reliance is distinguished by an alteration of one's circumstances in advance of the contingent event. Rhonda's bank account is less the moment that she purchases the ticket. Bob, one might think, has not lost anything until the fight happens—and only then does he win or lose (as in a friendly wager). But, even if we ignore the fact that the casino will likely require Bob to pay upfront, making the bet much more like the nonrefundable ticket, this difference seems to be a purely incidental feature of the examples. If Bob buys large quantities of gold because he has a hunch that the Chair of the Federal Reserve will slash interest rates, he is betting in a way that involves an upfront expenditure. If Rhonda foregoes signing up for a

conference scheduled shortly after the first one, anticipating that she will be exhausted by conferences at that point, she is acting in reliance, though she has yet to experience any material effect.

A second suggestion might be that betting and reliance are distinguished by different kinds of credences. Betting, one might think, involves a level of uncertainty that reliance does not. Someone who relies has good reason to believe the relied upon action or event will come to pass.¹ But this does not seem right. A bettor might have extremely strong grounds for belief, as when the poker player goes all in on four of kind, knowing that only a rare straight flush could defeat it. And a person can rely under uncertainty. Rhonda might ask her more skilled hunting partner to take a difficult shot on her behalf, knowing full well that she too might miss. Indeed, a person can rely on another without good reason to believe in success at all. Rita is sailing out at sea when a sudden storm capsizes and sinks her boat. The shoreline is a few miles away, almost certainly farther than she can swim. But she remembers two fishing boats operating a little farther out to sea. She decides that her best hope, though not a good one, is to head for the fishing boats and hope that one of them notices her and picks her up. Rita is, I would say, relying on the fishing boats to save her.²

The Rita example also speaks against a third possible grounds for drawing the distinction. There might be a temptation to say that reliance must be induced by the person relied upon. The conference organizers do something that foreseeably leads Rhonda to purchase a plane ticket. Ali does not similarly induce Bob to place a wager. But this thought breaks down quickly. Even the claim about Ali is not obvious—Ali surely knew when he agreed to the match that people would bet on it, and he may also have done things that would foreseeably lead to further bets on him, like declaring, “I’ve done something new for this fight. I done wrestled with an alligator, I done tussled with a whale; handcuffed lightning, thrown thunder in jail...”³ Further examples make the point more clearly: the poker player holding a winning hand who lures her opponent into an ill-conceived upping of the ante may have induced the upping through her conduct but the upping is a bet, not reliance. So, bets can be induced. And, moreover, reliance need not be induced. As already noted, Rita seems to be relying upon the fishermen to save her life when she swims towards them, but the fishermen have done nothing to induce that reliance.

Although inducement cannot plausibly distinguish bets from reliance, it’s worth noting the source of the proposal: we have the inchoate sense that reliance is something for which the relied upon person can (sometimes) be responsible, whereas bets are something for which the bet upon person is not (typically at least) responsible. Reliance, it seems, has a potential to matter in interpersonal morality in a way that bets do not. For many theorists, it is a central question to delineate what reliance requires in order to matter morally.⁴ That project, however, presupposes that not all reliance matters morally, and thus it cannot be what distinguishes reliance per se.

¹ A more complex version of this proposal might say that gambling involves selecting an option with a higher potential payoff over an option with a more certain but lower payoff. Perhaps that is a necessary feature of gambling, but reliance can (though need not) have that same structure.

² One might say that Rita gambles on making it into the fishermen’s sight and relies, conditionally, on their willingness to save her if they see her. Drawing such a distinction will not save the proposal that reliance involves higher certainty. The fisherman might instead be pirates and the uncertainty could be more about their willingness to save her life than about her making it to the boats. The temptation to draw this distinction, however, suggests the way that gambling intuitively concerns actions-as-events (making it to the boats) and reliance concerns actions-as-agency (choosing to save or not).

³ Waldorf Astoria Hotel, New York, September 1974. <https://www.youtube.com/watch?v=1LSewbS5eQI>

⁴ I’m thinking here, in particular, of reliance-oriented theories of promising. See Scanlon (1998, ch.7); Atiyah (1981); Fuller & Purdue (1937).

A fourth, related, but more promising possibility would be to invoke the concept of trust. Reliance, the thought goes, involves a relationship of trust between the two people in question; betting does not. Rhonda trusts the conference organizers to make good on their plans. Rita trusts the fisherman to be sufficiently good Samaritans that they would pick up a stranded swimmer if they saw her. In contrast, there is no relationship of trust between Bob and Ali or Bob and the head of the Federal Reserve.

This thought gets closer to the truth, but I think that it is still not quite right. There is rich philosophical literature on trust, and quite a range of views on its content. But, for the most part, philosophical writing on trust takes as a starting point that trust is more than mere reliance. As Annette Baier puts it:

What is the difference between trusting others and merely relying on them? It seems to be reliance on their good will toward one, as distinct from their dependable habits, or only on their dependably exhibited fear, anger, or other motives compatible with ill will toward one, or on motives not directed on one at all. (1986, 234)

Trusting, on this view, is a special form of relying, one based upon the relied-upon person's good will toward the person relying.⁵ If that widely-held philosophical understanding is correct—if trust is a type of reliance—then trust cannot be what distinguishes reliance from betting. Trust would be present in only a subset of reliance. Notably (though perhaps unsurprisingly), discussions of trust in the social sciences tend to be less moralized, including within the concept any dependability based upon self-interest. On this view, apparent reputational or long-term reciprocity incentives of another person may ground trust in that person—even without any belief in their goodwill.⁶ This conception brings trust closer to mere reliance. But, even on this less moralized view, trust will be—in the way that Baier indicates—a narrower category than reliance. One might rely upon another person merely by basing one's conduct on the other person's consistent pattern of conduct, as the good people of Königsberg allegedly set their clocks based on Kant's daily walk (Goldberg 2020). Or one might rely upon the dependably ill motives, bad habits or character defects of another, as when Tom Cruise's character in *A Few Good Men* relies on Jack Nicholson's character's pride in ruthlessly defending America when putting him on the stand to testify. Even for the social scientists, these will not be examples of trust. So, reliance, it seems, does not require trust in any meaningful sense. (Once again, the language can be misleading. We could speak of these examples using the word "trust," but then we might also say that Bob "trusts" Ali to win the boxing match.)

Moreover, it is not clear that a bet might not be based on trust.⁷ Indeed, one might think that Posthumus was led to wager so confidently on Imogen's conduct based on trust. The wager is craftily presented by Iachimo as a test of Posthumus's trust. And yet there is little doubt that Posthumus is betting.

Still, there is an important insight in the appeal to trust. Trust, it seems, involves an orientation towards another person that is characteristic of much—though not all—reliance. In

⁵ For others who endorse the idea that trust is a special kind of reliance involving good will, see Strudler (2005); Jones (1999).

⁶ See, for example, Ostrom & Walker (2003).

⁷ One feature of the trust literature that I am mostly sidestepping concerns whether trust centrally involves belief. See Hieronymi (2008). Conceptualizing trust as a belief allows us to say that trust grounds reliance, rather than itself being a kind of reliance. See Marušić (2017). On such an understanding, trust might also then be the basis for a wager. This strikes me as plausible. Combined with my argument below, it creates an interesting apparent paradox: one can base a wager on trust and yet wagering is inconsistent with the orientation involved in trust.

an influential article, Richard Holton describes the difference between trust and mere reliance in the following way:

The difference between trust and reliance is that trust involves something like a participant stance towards the person you are trusting. When you trust someone to do something, you rely on them to do it, and you regard that reliance in a certain way: you have a readiness to feel betrayal should it be disappointed, and gratitude should it be upheld. In short, you take a stance of trust towards the person on whom you rely. It is the stance that makes the difference between reliance and trust. When the car breaks down we might be angry; but when a friend lets us down we feel betrayed. (1994, 67)

Holton is here distinguishing trust on the basis of what Peter Strawson called “the participant point of view”—a point of view in which we feel attitudes like resentment towards others rather than seeing others as “posing problems simply of intellectual understanding, management, treatment, and control.” (1962, 18). For Holton, trust is reliance from the participant stance. And, as such, the person who trusts another is vulnerable not merely to disappointment, but to betrayal and accompanying feelings of resentment. This vulnerability is, it seems, the necessary correlate of orienting oneself towards another as an agent who acts for reasons. Their actions may then be wrongs or betrayals, not simply events in the world like a broken down car. Consider, in this respect, Hieronymi:

If I simply calculate the likelihood of your veracity or make predictions about your future behaviour on the basis of psychological facts about you, then I treat your intentions simply as so many features of my world. Though I may believe that you are a responsible agent, I treat you as an object. But if I recognize that you are a creature that acts for reasons, and if I further allow your reasons to factor into my thinking and support my beliefs and decisions in something like the way my own [reasons] will, it seems right to say that I adopt the participant stance towards you. If, further, I assume you are trustworthy and then take as central to my reasoning the reason given to you by the fact that I am relying on you, it seems plausible that this reliance would create the sort of vulnerability characteristic of the risk of betrayal. (2008, 226-227)

This participant stance does not, as we have seen, distinguish reliance; there can be reliance that is thoroughly from the objective stance (as in Kant’s regular perambulations). But, nevertheless, there is a reason why one is tempted to invoke the participant stance in seeking to distinguish reliance from betting. Although that stance is not essential to reliance, it is, as I will argue, foreign to betting.

III.

The previous section surveyed and rejected four possible ways to distinguish reliance from gambling. It is hard, it seems, to pick out a distinctive characteristic of reliance per se that would exclude gambling. More headway can be made, I think, by reversing the focus—attending to gambling and to what distinguishes it from reliance.

One can start by observing that gambling involves a trade—an exchange of chances. The person who places a bet willfully accepts a chance of loss for the sake of some chance of gain. When Bob places money on Ali, he knowingly accepts a chance that he will lose his money in exchange for a chance that he will win. But that is not enough, alone, to distinguish the wager from many kinds of reliance. When Rita swims away from shore in the hope that she will be rescued by the fishermen, she too takes on risks for the sake of potential benefit. Of course, we might describe such an action by saying, “it’s a gamble.” But that locution could describe any and all risk-involving activity; it is not about gambling in the narrower sense.

Gambling proper, I think, is distinguished in the following way: The gambler's potential gain is only possible because of the uncertainty; were he not taking on a potential for loss, the gambler would have no potential for gain in this way. The exchange of chances in a wager is not merely contingent; it is essential and reciprocal. If it were a public certainty that Ali would defeat Foreman, then Bob would have no prospect to gain by placing a wager. Insofar as he hopes to gamble, Bob would not welcome such certainty. If, in contrast, Rhonda's conference were a certainty or Rita's safety by swimming towards the fisherman were assured, neither's project would be foiled in the least. Each would welcome the certainty. In sum, although both gambling on another and reliance involve gains contingent upon the other person's actions, gambling is distinguished in that the mechanism of the potential gain essentially involves the other person's action being an uncertain event.⁸

This understanding suggests why—as Shakespeare understood—it can be so objectifying to be the subject of a wager.⁹ To be the subject of a wager is to have one's action treated as an event in the world. It involves others taking up the objective stance, not the participant stance, towards one's conduct. Recall Hieronymi's description: "If I simply calculate the likelihood of your veracity or make predictions about your future behaviour on the basis of psychological facts about you, then I treat your intentions simply as so many features of my world.... I treat you as an object." That is precisely what the gambler does; that is precisely what Posthumus did.

The distinction between gambling and reliance can be restated in these terms. As has already been noted, reliance does not require the participant stance; it is perfectly compatible with an objective view. But gambling requires an objective view; gambling is positively inconsistent with the participant stance. What distinguishes gambling is its necessarily objective stance towards the other.¹⁰

Two potential objections are worth considering at this point. First, one might argue that the gambler need not adopt an objective stance. All that is essential to the gambler, the objection would go, is that *their counterpart* regards the transaction as involving uncertainty about the outcome. The gambler might remain at all times fully confident of performance and at all times regard nonperformance as a betrayal.

Before attempting to explain why this objection fails, note what a poor defense of Posthumus it offers. According to the objection, Posthumus did nothing objectifying in wagering on Imogen's faithfulness. He was, after all, wagering that she *would* be faithful. And isn't that a display of trust? This reply offers little, I think, to the charge of objectification. Posthumus's willingness to wager may be a display of confidence, even confidence born of trust. But, in negotiating and making the wager, Posthumus does not treat Imogen as a beloved person. He treats her fidelity as a matter of prediction, and not as something she has assured.

The reason that the objection fails, I suggest, is that gambling involves joint activity requiring certain shared commitments among the participants. A wager between two people is basically a contract. (It is noteworthy that Shakespeare emphasizes the contracting formalities.

⁸ This account of the distinction bears a tight relation to a characteristic emphasized by Freeman (1907), namely that "the gains of the winner come out of the pocket of the loser." No person, unless intending to give a gift, would engage in such transfers without the element of uncertainty.

⁹ The fact that wagers typically involve money adds a further element of commodification, which is certainly part of the issue in *Cymbeline*. But notice that the stakes in a wager could be only symbolic or matters of honor. The potentially problematic objectification would largely persist.

¹⁰ There is an interesting association between this point, and a claim made by Hobson (1905, 138) criticizing the morality of gambling: "The essence of gambling consists in an abandonment of reason, an inhibition of the factors of human control."

Posthumus declares, “Let us have articles betwixt us,” and Iachimo replies, “Your hand; a covenant. We will have these things set down by lawful counsel.” (1.4.164-165, 173-174.) Contract law and contract theorists have long appreciated that every contract necessarily involves a set of shared commitments and assumptions.¹¹ In making a contract, both parties implicitly endorse these underlying basic assumptions. And, in the context of a wager, a basic assumption—perhaps the central basic assumption—is that there is a future event, uncertain to occur. The gambler cannot, therefore, avoid treating the subject of a wager with something other than the participant stance. He must, in this respect, share in the stance of his counterparty.

Not all gambling involves a direct counterparty in the fashion of a two-person wager. That complicates matters, but I do not believe that it changes the important point. Gambling requires others on the other side of the bet somewhere, all of whom are engaged in a kind of joint activity. By opting into this activity, the gambler opts into its foundational assumptions—one of which is that the subject-matter of the gambling is an uncertain event in the world.

A second objection runs as follows: All that gambling requires is uncertainty. Some uncertainty may involve whether another will live up to their obligations. But other uncertainty may be purely epistemic. The gambler and his counterparty may trust someone to act on their reasons and try their best. But there may still be uncertainty, either about what those reasons are or about the agent’s capability to succeed. And thus there can be wagers that are not agency diminishing. What is objectifying about trying to guess your favorite kind of ice cream, or in trying to predict if you will make the shot that you are attempting?

These are, indeed, different sorts of uncertainty, but I am not convinced that it changes the analysis in the subsequent section. Perhaps such gambles do not disrespect the agency of the other person in the same way; they may be less wrongful. But they still seem to be treating the person’s conduct as an event. Indeed, the objection simply points out that a wager on another might actually concern subject matter disconnected from their agency itself—might actually be a wager about features of the world (for example, the tastes of the ice cream samples or the performance of fast-twitch muscle fibers). So, again, it seems to me that gambling necessarily involves orienting oneself towards the subject of the wager in an objective stance.

IV.

This argument should not be taken to imply that gambling on the conduct of others is categorically wrong. It provides the resources for explaining why some instances of gambling are wrong—such as, when a lover wagers on his beloved’s faithfulness. In these instances, gambling will be wrong because one ought not to be assuming an objective stance towards the other person. Gambling on another person can be a violation of trust, intimacy, or respect.¹²

But the objective stance is not always impermissible. We often orient ourselves towards others as objective features of our world. Indeed, if we never so oriented ourselves, then we would

¹¹ For a strong version of the point, see Gilbert (1993). But one need not go so far to think that every contract has, built in, basic shared assumptions.

¹² There is a loose but interesting analogy here with a line of response sometimes adopted to Pascal’s wager. Voltaire, for example, responded to Pascal saying, “This article seems besides a little indecent and puerile; the idea of gaming, of loss and gain, little suits the gravity of the subject.” (Franklin 1998, 110). The thought seems to be that the very orientation of wagering is already inappropriate to religious belief. I don’t purport to be endorsing Voltaire’s thought, but only noting the analogy—that wagering involves the wrong stance.

miss out on a significant richness in the world—for people are fascinating creatures and their actions are often surprising, amusing, beautiful, and so on.¹³

If it is sometimes permissible to orient ourselves toward others in this way, then there should be no categorical objection to gambling on the grounds that it objectifies. If my students place bets on what color tie I will wear on Monday, I do not see that I have cause for complaint. If two parents have a secret wager between them over which college their child will select, there need not be anything impermissible (though there could be). And, notice that those on whom society often bets—the professional athlete or the reality TV contestant—may actually relish being regarded as an event or a phenomenon, even as it is a little alienating. So the claim that gambling on another’s conduct involves abandoning the participant stance—while providing the resources to say why some such gambling is wrong—implies nothing about the general permissibility of gambling.

My interest, instead, lies in the way that gambling bears on the gambler’s standing to complain, to resent, to hold accountable. I contend that, because the objective stance is essential to the wager, the gambler is disabled from resenting the person on whom they have gambled for losses suffered in the wager. To lodge such a complaint, the gambler would have to regard the person *simultaneously* as an object like a roulette wheel and as an agent who is responsible for her choices. This, he cannot do; it would involve a kind of practical contradiction.

That inconsistency can be highlighted by noting that, if the gambler were to complain, it would have a heads-I-win-tails-you-lose quality to it. If the wager comes out favorably, the gambler intends to take the winnings. But if the wager does not go as hoped, the gambler seeks to hold the wagered upon person accountable for the loss. The unfairness here is a reflection of the deep inconsistency.¹⁴

To see the thought in action, consider a simplified example. Suppose that you promise me that you will meet me for lunch on Thursday. Our mutual acquaintance, Tonya, holds a general belief that you are unreliable. She bets me \$50 that you will not show up. I accept. Tonya, it turns out, is correct; you do not make it to lunch. Can I hold you accountable for the loss of my \$50? Or, further still, for my losing out on winning \$50? I think not. I have no standing to complain to you about those losses.¹⁵

A few important clarifications are in order. First, I am not claiming that other complaint or resentment is unavailable. In the previous example, I may still have grounds for resenting your breach of promise, and I might complain to you on that basis. My contention is simply that my losses from the wager are not part of any grievance. (Similarly, had Imogen actually betrayed Posthumus, he could rightly have felt aggrieved—but not for the loss of his diamond ring.)¹⁶

Second, my argument is not that, in order to have grounds for complaint, an injured party must have, internally, adopted the participant stance towards the other person at the outset

¹³ We may even assume the objective stance towards ourselves. And there is nothing incoherent about betting on oneself. The argument of this paper potentially has interesting implications about what self-censure is and is not appropriate when one bets on oneself and loses.

¹⁴ I think this unfairness is a reflection of the inconsistency rather than the source of the lack of standing itself. Consider a case in which the gambler would not himself gain—perhaps any potential winnings will go to a charity or to the subject herself—but only bears the potential losses. I believe that the gambler would still lack standing to resent suffering such losses.

¹⁵ As noted above, I do not think it essential that the uncertainty concern fulfilling an obligation. If I wager on what ice cream you will choose, it still seems to me that I cannot resent you if I lose. This paper focuses on breaches of commitments because they more plausibly might be grounds for complaint.

¹⁶ Importantly, other grounds of complaint might include misrepresentation—as where an athlete purports to try but throw the match—or spite—as when I wear the wrong deliberately in order to cause a student to lose their bet.

or throughout. For example, I may regard a particular shopkeeper as completely untrustworthy and choose to rely upon him only on the prediction that he will be motivated by pure self-interest to treat me fairly. Nonetheless, should he mistreat me, I can resent him for it. My reliance in such a case, although motivated by sheer prediction, is nonetheless consistent with a participant stance. I can adopt the participant stance and, within it, point to my reliance as a kind of injury. The gambler is different. My point about the gambler is not that complaint would be a shift from the original, internally adopted orientation. Rather, it is that complaint would require simultaneously and publicly avowing two different, inconsistent orientations at once.

Third, the argument applies, it appears to me, whether the wager is known to the person gambled upon or not. That is, even if you learn about my wager with Tonya prior to our lunch date, I still cannot complain about my losses. This is perhaps surprising, for it suggests that a person wagered upon may have actual notice and knowledge of a loss to another that will result from their action, and yet nonetheless not be responsible for it.¹⁷ I am prepared to endorse that intriguing conclusion, though I expect that there will be exceptions to it as a general rule.¹⁸

V.

In this concluding section, I want to gesture at a way in which all of this may matter. The above conclusion—that the gambler lacks standing to complain against the gambled upon person—may seem plausible enough but of limited significance. After all, one might think, gambling, narrowly construed, occupies only a relatively small place in our social life.

But it does not take much reflection to notice that a significant amount of market activity—anything that has within it an element of speculation—bears a significant resemblance to gambling. When we purchase stock, open a business, or buy a house in a particular neighborhood, we acquire the potential for gains and simultaneously take on the peril of losses—the upside risk and the downside risk of the market. These gains and losses depend on the actions of others. The stock price could rise or fall based on what others in the market do, the demand for the business could boom or evaporate, the neighborhood could improve or deteriorate.

In noting the similarity here, I don't mean to say—as many have—that market investment just *is* gambling. Nor do I mean to comment upon the social value of investing. Henry Ford once quipped, “As betting at the race ring adds neither strength nor speed to the horse, so the exchange of shares in the stock market adds no capital to business, no increase in the production and no purchasing power to the market.”¹⁹ That is not my claim. My point is

¹⁷ One potential ramification of taking this thought seriously would be recognizing an exception to legal rules where parties are made responsible for losses based on their actual or constructive knowledge. For example, the rule of *Hadley v. Baxendale* holds promisees responsible for consequential losses when the promisee has knowledge of the potential loss. Perhaps the rule should not apply to losses from gambling upon performance (as opposed to reliance).

¹⁸ Here are a few possible exceptions: First, knowledge of the wager could trigger a duty of aid or beneficence. If I learn that you will lose all your assets to some ruthless hedge fund because of a wager you have made on my actions, perhaps I am accountable to you for my lack of aid if I do not attempt to come through for you. Second, there may be instances in which the person wagered upon is, in some sense, in partnership with the gambler and their knowledge of the wager will mean they are responsible as a matter of the partnership. If you and I operate a scheme to hustle rich college kids wherein I feign a lack of skills at the pool table until the moment that you place a large bet on me, then you can potentially hold me accountable. Third and probably most significant, knowledge of the wager could prompt a person to offer further assurance of their performance—to offer a kind of guarantee. If, upon learning of the bet with Tonya, you assure or promise me that I will get my \$50, then that may transform the situation.

¹⁹ *Ford News*, February 1, 1926.

simply that certain kinds of market activity involve—like gambling—an orientation towards the conduct of others as towards uncertain events.

If that is correct, then it could potentially explain why certain losses are not injuries for which we can hold those who cause them responsible. Some economic injuries—though by no means all or perhaps even most—are appropriately regarded as lost wagers. That fact, in turn, might offer a line of response to certain common concerns about overexpansive responsibility.

Both in moral philosophy and in the law, it is often observed that responsibility cannot possibly extend to all injuries caused by reliance on our conduct. R. Jay Wallace, for example, comments that, “Considered as a general basis for social life, principles that [governed] agents... whenever third parties might have an unforeseeable interest in relying on them... would be virtually paralyzing, and agents would have powerful objections to such principles on their own behalf.” (2019, 182). The law generally refuses to allow complaints by persons who rely upon a promise or a representation made to someone else, and, as justification, the expansiveness of the liability that might otherwise accrue—“an indeterminate amount for an indeterminate time to an indeterminate class,”²⁰ as Benjamin Cardozo famously put it—is often cited. The common law also traditionally precludes tort recovery for “pure economic loss”—that is, loss to one’s business or livelihood not accompanied by injury to person or property²¹—and this rule is similarly justified on the grounds that anything else would “open the door to every person in the economic chain... to bring a cause of action.”²² In all of these contexts, there is an understandable thought that we cannot possibly expect people to answer to anyone who may have in some fashion relied upon them.

Instead, the thought goes, we must find another basis for answerability. Mere reliance—mere harm—will not do. For moral philosophers, the answer is often an appeal to directed duties. For the law, it is an appeal to “privity,” which similarly involves something like directed duties. We are not, the thought goes, answerable to those who rely on us, but only to those to whom we owe a duty—with reliance sometimes but not always generating such a duty. To be sure, there are independent arguments that favor such a conception of interpersonal accountability. But an influential one is that such a conception offers the only alternative to either a sea of unrestrained accountability or else ad hoc policy-based line drawing.

I aim to be gesturing at another alternative. We can agree that there cannot possibly be accountability for all instances of reliance, broadly construed—to every third-party beneficiary of a promise, to anyone who suffers economic losses from an accident, to our neighbors for the effect of our choices on their home values. And yet, rather than concluding that there must be some other, narrower basis for accountability—directed duties or privity or sheer public policy—we can seek to explain why certain kinds of harm do not generate accountability. That is, we can try to regard these cases of economic loss as exceptions to a broad default of accountability, not evidence that accountability lies elsewhere.

A broad advantage of this alternative strategy, it seems to me, is that it regards the participant stance as our default orientation towards others in our moral community. It says, in effect, that I can trust you to keep your promises (even if they are made to someone else), to avoid

²⁰ *Ultramares Corp. v. Touche, Niven & Co.*, 174 N.E. 441, 444 (N.Y. 1931).

²¹ For example, in *Rickards v. Sun Oil*, 41 A.2d 267 (N.J. 1945), plaintiffs’ tourist-oriented businesses (fishing pier, bar, hotel, etc.) located on an island connected by a single drawbridge were shut down for an entire season because a drunk barge operator crashed into the drawbridge, but no recover was permitted as the plaintiffs didn’t own the drawbridge. See also *Kinsman Transit Co. v. City of Buffalo (Kinsman No. 2)*, 388 F.2d 821, 824-25 (2d Cir. 1968).

²² *Aikens v. Balt. & Ohio R. Co.*, 501 A.2d 277, 279 (Pa. Super. Ct. 1985) (rejecting employees’ claim for lost wages caused a train derailment damaging the plant where they worked).

negligent accident (even when the lack of due care concerns someone else), and so on. It is not necessary that you induce my reliance or even know of my reliance. I can resent you if you fail to do as you ought; I can see it as a betrayal. The fact that I cannot complain about certain speculative economic losses is an exception.

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